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February 4, 2021

Via ECF

The Honorable Judge Kiyo A. Matsumoto  
United States Courthouse  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Agudath Israel of America, et al. v. Cuomo, No. 20-cv-04834 (E.D.N.Y.)(KAM)(RML)

Dear Judge Matsumoto:

This Office represents Governor Andrew M. Cuomo, Defendant in the above-referenced matter. This letter concerns (1) the Court's January 26, 2021 Order, which directs the parties to submit witness lists, exhibits, and briefs in anticipation of a preliminary injunction hearing on Executive Order 202.68's 25% and 33% capacity limits on houses of worship, currently scheduled for February 8, 2021; and (2) the Court's February 2, 2021 Order, which found Defendant's letter to be "ambiguous as to the terms of defendant's consent to a preliminary injunction or permanent injunction."

In light of the rulings in this case by the U.S. Supreme Court and the Second Circuit, specifically, the finding that "both the fixed capacity and the percentage capacity limits on houses of worship" in the red and orange zones "are subject to strict scrutiny," *Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 632 (2d Cir. 2020), Defendant consents to the issuance of a preliminary injunction under the following specific terms:

- The Preliminary Injunction shall apply to Defendant and any New York State officer, agent, servant, or employee who is responsible for enforcing Executive Order ("EO") 202.68 (collectively, "Enjoined Parties");
- The Preliminary Injunction shall enjoin the Enjoined Parties from enforcing the 25% capacity limits based on maximum indoor occupancy against any house of worship in New York State located in an area designated as a red zone under EO 202.68;
- The Preliminary Injunction shall enjoin the Enjoined Parties from enforcing the 33% capacity limits based on maximum indoor occupancy against any house of worship in New York State located in an area designated as an orange zone under EO 202.68;
- The Preliminary Injunction shall convert to a Permanent Injunction after 120 days from the date of the Preliminary Injunction Order the Court issues in this case unless EO 202.68 is revised, within that 120-day period, so to remove houses of worship and the restrictions

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set forth therein. In that case, the Preliminary Injunction will expire, by its own terms, on the date of such revision.

- Except as set forth in the above-described Preliminary Injunction and Permanent Injunction, the Enjoined Parties shall not be limited in their ability to issue subsequent Executive Orders, regulations, guidelines, rules, or any other directives concerning the COVID-19 emergency, houses of worship, or any other matters.

In view of Defendant's detailed specification of his consent to the scope of the Preliminary Injunction, Defendant respectfully submits that an evidentiary hearing is unnecessary and requests that the Court reconsider its decision in that regard.

Plaintiffs and Defendant are presently negotiating the terms of a proposed Joint Preliminary Injunction Order, including specific findings justifying such an injunction, in accordance with the Court's February 2, 2021 Order. To the extent that Plaintiffs and Defendant may disagree over the precise language of any term of an injunction, Defendant respectfully submits that such disagreement would be a legal issue that could be resolved through specific briefing and argument of counsel, not an evidentiary hearing. Defendant suggests that the Court permit Plaintiffs and Defendant to set forth in the Joint Preliminary Injunction Order any areas of disagreement that may necessitate further legal argument. Counsel for Defendant is available at the Court's convenience if it determines that a conference may be helpful on any of the foregoing.

Thank you for Your Honor's consideration of this matter.

Respectfully submitted,

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cc: All Counsel (via ECF)